IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 621 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? NO

2 To be referred to the Reporter or not ? NO

3 Whether their Lordships wish to see the fair copy of the judgment ? NO

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? NO

5 Whether it is to be circulated to the civil judge ? NO

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GIRISHBHAI HARSHADBHAI VYAS - Petitioner
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR PRAVIN GONDALIYA for Petitioner.
MR KC SHAH, APP for Respondent No. 1
MR HRIDAY BUCH, for Respondent No. 2

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 24/04/2007

ORAL JUDGMENT

1. Girishbhai Harshadbhai Vyas, petitioner-original

accused, has filed present revision application under Sec.397 read with Sec.401 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code") with a prayer that this Court may be pleased to quash and set aside the judgment and order dated 11.7.1996 passed by learned JMFC (Municipal) Court, Rajkot in Criminal Case No.100/86 and further be pleased to quash and set aside the judgment and order dated 31.8.2006 passed by the learned Additional Sessions Judge, 12th Fast Track Court, Rajkot in Criminal Appeal No.17 of 1996 and thereby acquit the petitioner from the charges levelled against him.

2. I have heard Mr.Pravin Gondaliya, learned advocate for the petitioner, Mr.K.C.Shah, learned APP for the respondent No.1-State of Gujarat.

3. Since this is a matter of 2006 and the petitioner-accused is in jail, and the matter also listed for some time back, and as there is total sentence imposed of is for six months, and the petitioner has already undergone more than one month imprisonment, and if there is further delay on account of Rajkot Municipal Corporation, the matter may be further delayed in this behalf. In view of this peculiar facts and circumstances of the case, this Court requested Mr.Hriday Buch, learned advocate to appear on behalf of Rajkot Municipal Corporation, and he has readily agreed to appear on behalf of Corporation with a view to see that there may not be unnecessary delay in this behalf. Therefore, though rule was not served to respondent No.2 – Rajkot

Municipal Corporation, and when Mr.Buch, learned advocate appeared on behalf of the Corporation, in view of the same, Mr.Hriday Buch, learned advocate appears and waives service of Rule on behalf of respondent No.2-Corporation. Hence, the matter is taken up for final disposal.

3. The relevant facts giving rise to this revision application are as under:-

3.1 The Food Inspector Shri K.N.Yadav took a sample of turmeric powder from the shop of the petitioner on 18.1.2005. The sample was sent for analysis to laboratory at Vadodara, and it was found not conforming the standards prescribed under the provisions of Food Adulteration Act. After getting sanction from the authority a criminal complaint was filed against the petitioner before th Judicial Magistrate First Class at Rajkot and the same was registered as Criminal Case No.100 of 1986 and the petitioner was tried before the Judicial Magistrate First Class (Municipal Court) at Rajkot.

3.2 The petitioner came to be convicted by the learned JMFC Court at Rajkot for the offences punishable under Sec.7(1) read with Sec.16(1)(A)(i) of the Prevention of Food Adulteration Act (hereinafter referred to as “the said Act”), and the petitioner is directed to undergo the sentence for rigorous imprisonment for six months and fine of Rs.1,000/-, and in default of the same further imprisonment for

three months.

3.3 Being aggrieved and dissatisfied with the said judgment and order of conviction, the petitioner preferred an appeal before the learned Additional Sessions Judge at Rajkot being Criminal Appeal No.17 of 1996. The appeal of the petitioner came to be dismissed by the learned Sessions Judge by his judgment and order dated 31.8.2006 confirming the order of conviction passed by the trial court.

3.4 Being aggrieved and dissatisfied with the aforesaid judgment and order of trial court as well as the order of appellate court, the petitioner filed present revision application before this Court somewhere on 15.9.2006.

3.5 On 30.3.2007 this Court has issued Rule making it returnable on 10.4.2007 and also called for Record & Proceedings in this behalf.

4. Mr.Pravin Gondaliya, learned advocate for the petitioner has made following submissions:

4.1 The learned advocate for the petitioner submitted that the learned Courts below ought to have appreciated the fact that there are some breach of mandatory provisions of the prevention of Food Adulteration Rules (hereinafter referred to as “the said Rules”) particularly there is a breach of mandatory provisions of Rules 14, 16, 17 and 18 are not complied with and there is breach of the said

rules and therefore the benefit of doubt ought to have been given to the present petitioner.

4.2 The learned advocate for the petitioner submitted that looking to the said report, it appears that the test which is applied is Microscropic test which is not provided for in the act or rules. He submitted that on the basis of such evidence, the petitioner ought not to have been convicted by the trial Court.

4.3 The learned advocate has further submitted that the Courts below have gravely erred in convicting the petitioner relying upon the deposition of Food Inspector only. It is submitted that looking to the deposition of Food Inspector there are number of contradiction, omissions and exaggeration and therefore same ought not to have been believed by the trial Court.

4.4 The learned advocate has further submitted that there is breach of mandatory provision of Rule 13(2) of the prevention of Food Adulteration Rules. He further submitted that the report is not sent by the local health authority to the petitioner within the prescribed time as per the provisions of sub-sec (2) of Rule 13. He has further submitted that under the circumstances the impugned orders passed by the lower Courts are liable to be quashed and set aside.

4.5 He has also submitted that there is a breach of Rule 14 also. It is submitted that the sealing of

the sample is also not as per the requirements of the Rules. It is further submitted that the Food Inspector has not taken the sample in cleaned, washed and dry bottles as per requirement of Rule 14 and therefore also the judgment and order of conviction and the order of lower appellate Court is also liable to be quashed and set aside.

4.6 The learned advocate for the petitioner stated that in view of the order passed by the Courts below the petitioner is in custody since 15th March, 2007. He further stated that, in view of this peculiar facts and circumstances of the case, if this Court passes an order which was passed by this Court in the matter of Azad Soda Factory vs. State of Gujarat in Criminal Revision Application No.173 of 1989 (Coram: J.R.Vora, J.) on 30.8.2001 in identical case arising out of Food Adulteration Act, the same may be in the interest of justice.

4.7 It may be noted that in the matter of Azad Soda Factory vs. State of Gujarat, it was also a case of Food Adulteration Act where my learned Brother Justice J.R.Vora has relied upon the judgment of Hon'ble Apex Court in the case of NORTAN MAL vs. STATE OF RAJASTHAN reported in 1995 Cri.L.J. 2661, also another judgment in the case of N.SUKUMARAN NAIR vs. FOOD INSPECTOR, MAVELIKARA reported in 1995 Cri.L.J. 3651 particularly para 3 and last judgment in the case of SANTOSH KUMAR vs. MUNICIPAL CORPORATION AND ANOTHER reported in AIR 2000 SC 3416. In the said Santoshkumar judgment the Hon'ble Apex Court has

relied upon the said judgment and in para 5 page 3417 the Hon'ble Apex Court has observed as under:

> “This case seems to be almost on a parallel with the facts enumerated in the decision cited above. We are also persuaded to extend the same benefit which the appellant in the aforesaid decision was granted by this Court, as this would be an appropriate case for commutation of sentence under Clause (d) of Section 433 of the Code of Criminal Procedure.”

4.8 Mr.Pravin Gondaliya, learned advocate states that in the present case the petitioner has paid Rs.1,000/- as fine as ordered by the Courts below dated 11.7.1996. In view of the same (i.e. Santoshkumar case supra), he has relied upon para 6 of the judgment which is on page 3417 which reads as under:

> “We, therefore, direct the appellant to deposit in the trial Court a sum of Rupees 10,000/- as fine in commutation of the sentence of 6 months imprisonment within a period of 6 weeks from today and intimate to the appropriate Government that such fine has been deposited. On deposit of the fine the State Government may formalise the matter by passing appropriate order under Clause (d) of Section 433 of the Code of Criminal Procedure. In the meanwhile

the appellant will remain on bail.”

4.9 In view of the aforesaid facts and circumstances of the case, when the sample was taken on 18.1.1985 almost before more than two decades, the age of the accused is of 55 years of age. In this case at Exh.48 the Food Inspector Report is also produced. The Food Inspector has taken the sample of turmeric power and as per the said rules, the same standard was taken. The said report reads as under:

Sr. No.	Characteristic examined	Result of Analysis	P.F.A. Limits
K-7	Description:Light yellow fine to coarse powder with characteristic odour like turmeric.		
1.	Moisture %	7.5%	Max 13.0%
2.	Total ash%	5.9%	Max 9.0%
3.	Ash insoluble in di.Hcl%	0.5%	Max 1.5%
4.	Total Starch %	46.6%	Max 60.0%
5.	Tast for lead chromate	Negative	Negative
6.	Artificial colouring matter:	1.Non permitted metanil yellow coal tar colour & 2.Non permitted orange & yellow oil soluble coal tar colours detected.	
7.	Microscopic Examination:	The sample is turmeric powder. It is mixed with plenty of paddy husk, rice starch & maize starch.	

4.10 The contention of the petitioner is that there

was a violation of provisions of Food Adulteration Act was negatived by the learned Judge. The learned Judge has accepted the contention of Rajkot Municipal Corporation that the sample taken from the petitioner on 18.1.1985 was adulterated as per provisions of Sec.7(1) read with Sec.16(1)(a)(i) of the Prevention of Food Adulteration Act, and thereby convicted the accused and ultimately imposed imprisonment for six months and fine of Rs.1,000/-.

5. Having considered all these peculiar facts and circumstances of the case, and since the accused i.e. the present petitioner has already undergone imprisonment for more than one month and also paid the fine of Rs.1,000/-, this Court is of the view that this is an appropriate and fit case wherein the State Government can be directed to formalise the matter by passing appropriate order under Clause (c) of Sec.433 of the Code of Criminal Procedure Code only in respect of commutation of sentence of imprisonment. In this view of the matter, the following order is passed.

6. The Revision is partly allowed. The judgment and order dated 11.7.1996 passed by learned JMFC (Municipal) Court, Rajkot in Criminal Case No.100/86 as well as the judgment and order dated 31.8.2006 passed by the learned Additional Sessions Judge, 12th Fast Track Court, Rajkot in Criminal Appeal No.17 of 1996 are revised to the extent that since the petitioner had deposited the amount of fine of Rs.1,000/-, this part of fine is not interfered with. The State Government is directed to formalise the

matter by passing appropriate order under Clause © of Section 433 of the Code of Criminal Procedure for commutation of sentence only of imprisonment awarded to the petitioner within six months from the date of the intimation to the State Government.

7. In the meanwhile, in view of the peculiar facts and circumstances of the case, the petitioner is ordered to be released on bail on his executing a personal bond of Rs.5,000/- (Rupees Five Thousand only) and with one surety of the like amount and on usual terms and conditions till the State Government decides the application for commutation of sentence. It may be noted that this order may not be treated as precedent in the subsequent matter.

8. Rule is made absolute to that extent. Direct service is permitted.

Sd/

(K.M. Mehta, J.)

syed/

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 24/04/2007

OPERATIVE ORAL JUDGMENT

The Revision is partly allowed. The judgment and order dated 11.7.1996 passed by learned JMFC (Municipal) Court, Rajkot in Criminal Case No.100/86 as well as the judgment and order dated 31.8.2006 passed by the learned Additional Sessions Judge, 12th Fast Track Court, Rajkot in Criminal Appeal No.17 of 1996 are revised to the extent that since the petitioner had deposited the amount of fine of Rs.1,000/-, this part of fine is not interfered with. The State Government is directed to formalise the matter by passing appropriate order under Clause © of Section 433 of the Code of Criminal Procedure for commutation of sentence only of imprisonment awarded to the petitioner within six months from the date of the intimation to the State Government.

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Rule is made absolute to that extent. Direct service is permitted. This order is only for writ purpose only.

Sd/-

(K.M. Mehta, J.)

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